

issues remain to be resolved for use of the D-digit to afford any real relief now or in the near future.

C. Overview of Pooling

The CPUC recommends a regulatory approach to pooling which consists of three elements. First, California believes that the Commission should order nationwide ubiquitous deployment of LNP LRN technology in order to provide the infrastructure needed to support number conservation. Second, we urge the FCC to delegate to state commissions authority to order implementation of pooling, including 1,000-block pooling, ITN pooling, and UNP. States are better able to determine where within their borders pooling will provide benefits, and to establish a practical schedule for implementation. Finally, the CPUC believes that when number pooling is ordered all carriers operating within those NPAs must be required to participate in pooling or the benefits of pooling will be radically reduced. Carriers not currently LNP-capable must implement it in order to be able to participate in pooling, or should be placed in a separate, non-pooled NPA.

Below we comment more specifically on aspects of pooling.

D. Number Pooling Implementation Issues

The CPUC generally supports the states' outline with respect to number pooling issues, but offers the following additional comments.

Thousand-block number pooling is the CPUC's highest priority for finding a long-term solution to the numbering crisis we face in California today. We are mindful that

implementing 1,000-block pooling will take some time, and may not be accomplished in time to forestall the need for relief in some of the NPAs in California currently in jeopardy. At the same time, we believe that once 1,000-block pooling is established, it will dramatically slow the pace at which numbering resources are dispensed to carriers. For this reason, we consider pooling to be a much higher priority than rate center consolidation. First, RCC poses the very real potential for substantial, permanent, direct costs to consumers through rate re-balancing. This is not similarly true for number pooling. In addition, we estimate that without full cooperation from the telecommunications industry in California, including willingness by all parties to compromise, a proceeding to establish the approach for significantly reducing the number of California rate centers will take eighteen months. It would be a fact-intensive process, likely requiring hearings. After we establish the means to accomplish the goal, it would likely take another year to actually consolidate the rate centers and to adjust customer billings, including the changes necessary to the carriers' billing software. Number pooling can be implemented more quickly, as noted in the NANC/NRO Report.

Plus, all of the media attention in California shed on the inefficiencies of the current number allocation system has generated considerable public support for number pooling, whereas we do not anticipate similar public support for raising basic exchange rates to compensate carriers for lost toll revenues. Finally, we note that the last rate re-balancing proceeding for Pacific Bell and GTE California lasted several years and was extremely contentious.

For all of these reasons, the CPUC fully supports aggressive action by the FCC to set up a 1,000-block number pooling process. We further believe that all carriers, irrespective of their utilization thresholds or industry segment, should be required to participate in pooling. (NPRM, ¶ 138.) California concurs with the position set forth in the state outline that cost/benefit analyses are unnecessary, as the NANC, NANPA, and other groups have already assessed the costs and benefits of number pooling.¹⁷

If, however, the FCC determines that cost/benefit analyses are needed before number pooling can be ordered, such analyses should include 1) the avoided costs of expanding the NANP¹⁸, and 2) the costs to the public if pooling is not implemented. Specific carrier costs associated with setting up number pooling must be weighed against the external costs to the public of undergoing repeated area code relief and possible need to expand the NANP. This should not be a one-way street, with only carrier costs at issue while public costs are irrelevant. The costs of implementing pooling should be relatively small, inasmuch as the majority of the costs to deploy the network infrastructure to support both LNP and pooling already are being borne by the public directly.

Finally, if the FCC declines to delegate pooling authority to the states, but chooses to order it nationally, we have a few comments on how that should be done. California is aware that two states, New York and Illinois, have number pooling trials in progress. We would not object to using the approach developed in either of those states as the model

¹⁷ We note again, here, that the FCC has not proposed any cost/benefit analysis for rate center consolidation.

¹⁸ The FCC includes in the NPRM an estimated cost range of \$50 to \$150 billion to expand the NANP. (NPRM, ¶ 34.)

for a national number pooling program.¹⁹ The CPUC does believe, however, that it may prove impractical to try to implement number pooling nationwide on the same date. This would necessarily delay implementing number pooling in some regions to accommodate those areas where states or carriers are not ready. Plus, the planning period for a simultaneous nationwide roll out would be longer in order to ensure that it all works at once. We recommend, instead, that the FCC consider a phased rollout of pooling, perhaps beginning at a minimum with the NPAs that serve the top 100 MSAs, though we oppose limiting pooling to only those MSAs.

E. Individual Telephone Number (ITN) Pooling and Unassigned Number Porting (UNP)

The CPUC concurs with the position in the state outline that the FCC should not abandon ITN and UNP. (NPRM, ¶ 141.) In addition, we believe that the Commission should establish a specific deadline by which carriers should be ready to implement ITN, including the configuration of any necessary databases. The CPUC recommends that the FCC set a deadline of three years from the date that 1,000-block pooling is fully in place for ITN to be implemented. This three-year period will give carriers adequate time to resolve any unforeseen issues associated with 1,000-block pooling and to augment their systems for ITN. If individual states and carriers in those states, however, are ready to implement ITN prior to an FCC-mandated deadline, the Commission should authorize those states to order ITN earlier.

¹⁹ We are generally aware that the industry prefers the Illinois approach.

We agree with the state recommendation that the FCC should delegate to state commissions authority to determine when and where UNP is appropriate, as well as authority to order carriers to participate in UNP programs. (See NPRM, ¶ 142.) State commissions are much more attuned to local needs than is the FCC. Accordingly, states should have authority to resolve any call routing, E-911 or other problems associated with implementing UNP. Depending on local conditions and circumstances, UNP could be a very effective conservation measure and could encourage carriers to work cooperatively with one another on solutions to the numbering crisis.

F. FCC Authority to Order Deployment of Local Number Portability

Congress gave the FCC plenary jurisdiction over the NANP in the 1996 Federal Telecommunications Act. Pursuant to that jurisdiction, the CPUC believes the Commission also has authority to order deployment of LNP in all areas of the nation for the purpose of implementing number pooling. Plainly, the FCC has already ordered deployment of LNP premised on the authority granted by the 1996 Act, and has issued orders pertaining to conservation measures pursuant to that same authority. Therefore, the CPUC does not see why the FCC could not order deployment of LNP as the essential component of a critical conservation measure – number pooling.

We further believe that the FCC can and should delegate some of that authority to the states. (NPRM, ¶ 145.) Section 251(e)(2) of the 1996 Act grants exclusive jurisdiction over the NANP to the FCC, but also states that “[n]othing in this paragraph shall preclude the commission from delegating to State commissions or other entities all

or any portion of such jurisdiction”. (Emphasis added). Thus, if the FCC concludes that it possesses the authority to order deployment of LNP in order to facilitate implementation of number pooling, the FCC also may delegate that authority to the states. Congress established no limitation on authority over the NANP which the FCC could delegate to the states.

Further, given the high costs to the public of implementing repeated area code relief plans and the projected cost estimates of expanding the NANP, the CPUC believes the current numbering crisis in the U.S. demands that the FCC order LNP implementation throughout the nation in preparation for number pooling.²⁰ Recent petitions that several states, including California, have filed before the FCC underscore the need to implement number conservation measures.

In particular, state requests for authority demonstrate that number pooling is needed by states with only one area code, such as Maine, and by states with so many area codes we can barely keep track of the number, such as California. The majority of California’s 25 area codes are in jeopardy and are being rationed. While California has several of the top 100 MSAs, many of the areas slotted for relief are outside of the top 100 MSAs but still would benefit from conservation measures, including 1,000-block pooling. This is also true for states without any of the top 100 MSAs. Without deployment of LNP in all areas, California (and other states) would be precluded from

²⁰ California notes that the two major ILECs in this state have reported to us that they have deployed LNP throughout their service territories.

exploring whether number pooling could alleviate the crises in many rural areas where numbers are in demand.

The FCC could conclude it has authority to order deployment of LNP throughout the U.S. but still decline to do so. In that event, the CPUC urges the Commission to delegate authority to the states to order LNP deployment in conjunction with implementation of other code conservation measures, that state commissions wish to implement in response to local conditions. Finally, the CPUC finds it curious that the Commission only refers to implementation of LNP in association with 1,000-block pooling but not with respect to other forms of pooling, such as ITN and UNP. To be clear, our comments regarding deployment of LNP for purposes of implementing pooling are not limited to 1,000-block pooling but apply to ITN and UNP as well.

G. State Authority Over Number Pooling

California generally agrees with the positions in the state outline regarding authority of state commissions over number pooling. (NPRM, ¶¶ 146-148.) At the same time, the CPUC wishes to emphasize again that the questions framed should not be limited to 1,000-block pooling, but should apply to all forms of pooling. If states give up the right to decide when and where pooling should be implemented, that right should not then be given to individual carriers, which are business entities geared towards protecting their business interests and the interests of their shareholders. They will not make decisions with the goal of protecting the public interest or public numbering resources.

Therefore, the FCC should act in the public interest and determine whether pooling is warranted in those states whose commissions chose not to decide.

Further we believe that states need the flexibility to respond to local conditions as they evaluate where and when to implement number pooling. (NPRM, ¶ 149.) Rigid FCC criteria for how, when, and where states can implement number pooling would remove that flexibility.

For example, using the number of competitor, or of CMRS and paging providers as national criteria for whether LNP is deployed in conjunction with implementing number pooling would be inappropriate and would appear to be a state-specific matter. Again, we believe that states would be uniquely positioned to weigh local circumstances in choosing which conservation measures to deploy. California notes that CMRS and paging companies draw a significant number of NXX codes in California NPAs.²¹ Rather than the number of users, the sheer number of CMRS and paging providers should be the basis for requiring nationwide LNP deployment. In some areas of the country, CMRS providers are the sole or primary provider of local telephone service. Such cases support the request by California and Massachusetts to establish NPAs dedicated to a specific service or technology, especially if these providers are not LNP-capable.

We also generally concur with the position in the state outline recommending that states be allowed to opt in or out of a nationwide pooling mechanism on a rate-center-by-rate-center basis. (NPRM, ¶ 154.) In addition, we believe that restricting number

²¹ For example, wireless carriers collectively hold upwards of 150 NXX codes in the 310 NPA.

pooling, even initially, to the top 100 MSAs ignores the fact that NPA and MSA boundaries do not necessarily coincide. Such a restriction could mean that states cannot implement number pooling in NPAs that include both areas within and outside of those MSAs. This, in turn, will likely mean imposing further unnecessary costs associated with repeated relief on an already overburdened public.

H. Non-LNP Capable Carriers

The CPUC generally agrees with the position set forth in the state outline that once CMRS carriers are LNP-capable, they should be required to participate in 1,000-block pooling. (NPRM, ¶¶ 160-161.) As noted previously, CMRS providers and paging companies draw a significant number of NXX codes in California NPAs, and thus, it is desirable to include these providers in number pooling efforts.²² The wireless carriers' claims of higher utilization rates may prove to be true but have yet to be verified. Without LNP capability, we reiterate our need for authority to consider establishing service- or technology-specific area codes to avoid premature exhaust of pooled NPAs. If 1,000-block pooling requirements are extended to these carriers, California cannot identify any rationale for allowing pooling requirements to be limited to specific NPAs or to the 100 largest MSAs for CMRS and paging carriers. In California, CMRS and paging providers hold NXX codes in a variety of NPAs, which include areas both within and outside of the top 100 MSAs.²³

²² This would be true even if we were granted authority to establish a service- or technology-specific area code, and created such an NPA dedicated to a wireless services.

²³ It is entirely possible that wireless providers hold NXX codes in every NPA in California, but we have not yet determined

The CPUC agrees with the state recommendation that all LNP-capable rate centers should presumptively be included in pooling if required by the relevant state commission. (NPRM, ¶ 170.) In addition, we reiterate that if the FCC declines to order deployment of LNP throughout the U.S., it should delegate authority to the states to order LNP deployment in conjunction with implementation of conservation measures the states adopt.

I. Administration

1. Contamination Thresholds

The CPUC generally agrees with the state recommendation that the same initial contamination threshold should apply to all industry segments. (NPRM, ¶ 189.) California also believes, however, that states should be given the flexibility to change the threshold depending on the particular circumstances in each state. For example, new entrants may have lower utilization rates than established carriers. It would not advance the development of competition if these carriers were required to donate a significantly higher percentage of their limited number resources than would be the case for incumbents.

2. Sequential Number Assignment

California concurs generally with the states position on sequential number assignment. Should the FCC decide, however not to adopt any rules regarding sequential numbering requirements for all carriers nationwide, the FCC should delegate to state

if this is the case.

commissions authority to order sequential number practices to respond to individual state needs. Any arguments by carriers that sequential number practices would impair a nationally cohesive numbering system are nonsense. Individual state requirements pertaining to sequential numbering will not impede the flow of telecommunications traffic, or affect a carrier's ability to complete calls. Such requirements only improve efficient utilization of numbering resources.

Rather, carriers have indicated to us that they want some flexibility to deviate from sequential number assignment in order to respond to requests from business customers for large blocks of numbers. We are prepared, and believe most states are, to consider some compromise that would both address our concerns that large quantities of numbers not be stranded by inefficient assignment practices, and industry desires to respond to customer demands. Therefore, the FCC should allow states to adopt such rules if the FCC chooses not to do so.

V. PRICING OPTIONS

The CPUC does not specifically endorse the state outline on the question of whether the FCC should establish a pricing mechanism for carrier access to public numbering resources. Indeed, we have mixed views on the FCC's proposals. California fully appreciates the perspective that numbers might be used more efficiently if the user must pay for the use of the resource. Along those lines, therefore, we agree generally with the Commission that the status of numbers as a public resource "is not necessarily an argument against requiring payment for their use, much as payments are required for

other public resources”. (NPRM, ¶ 229.) We also agree that if the FCC decides to establish a pricing mechanism for numbering resources, such a system would need to be phased in over time and should not be introduced on a flash-cut basis. (Id., ¶¶ 226, 238.)

We acknowledge the axiom of economic theory that if someone must pay for something, he/she will value that item more highly than if the item is obtained for free. Whether that axiom can be reasonably applied to public numbering resources, however, may be problematic, as noted in the comments below.

A. The FCC’s Legal Authority to Create a Pricing Mechanism

The Commission asks first whether it possesses the legal authority to establish a pricing mechanism for numbering resources pursuant to § 251(e)(2) of the 1996 Federal Telecommunications Act. Section 251(e)(2) provides for the costs of numbering administration and of local number portability to be borne by all carriers on a competitively-neutral basis. (NPRM, ¶ 228.) The CPUC believes that it is questionable whether § 251(e)(2) can be interpreted to encompass creation of a pricing mechanism for the use of numbers. Section 251(e)(2) reads as follows:

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

Frankly, we are not sure what Congress meant by the term “numbering administration arrangements”. But, we think the more reasonable reading of § 251(e)(2) limits its applicability to recovery of direct administrative costs related to overseeing the allocation of numbers and management of the national numbering system. Further, we are

not sure that Congress envisioned a direct carrier charge for numbers as a competitively-neutral means of recovering those administrative costs. Certainly, establishing a market-based pricing scheme for numbering resources would extend beyond recovery of direct administrative costs since, presumably, a market-based mechanism would be intended to match prices to demand and not to costs. An administrative-cost based scheme might pass § 251(e)(2) muster, but carriers likely would challenge such a scheme.

The FCC may be able to rely on other authority to establish a pricing mechanism for numbering resources, though the CPUC cannot recommend an alternate source for such authority. Thus, if the FCC determines that a policy of charging carriers for use of public numbering resources is appropriate, in the CPUC's view, the FCC should seek express statutory authority to do so.

B. The Scope of the License May Be Indeterminate

Based on the FCC's suggestion that a "license-type arrangement" would be the mechanism through which carriers would obtain access to numbering resources, the CPUC suspects the FCC considers numbers to be analogous to the electromagnetic spectrum. Several years ago, the FCC auctioned off licenses for Personal Communications Services (PCS). Each license authorized the licensee to use a defined portion of the electromagnetic spectrum to provide PCS to the licensee's customers.²⁴ When a PCS licensee recruits a customer and provides service, the licensee continues to hold the spectrum used to provide the service. If the customer changes from one PCS

²⁴ Similarly, other portions the electromagnetic spectrum are licensed to broadcast licensees who use those portions for their

telephone to another, the licensee still holds the spectrum. And, if the customer changes carriers, the carrier retains the right to use the spectrum, as the customer cannot take the spectrum used to provide PCS service from one carrier to another.

In contrast, once assigned a telephone number, a customer possesses the ability to take, or port, the number from one carrier to another within the customer's exchange.²⁵ This means that once a carrier obtains numbering resources, neither the carrier nor the FCC can assume that the carrier will retain control over those resources after specific numbers are assigned to end users. Thus, if a carrier is required to pay a license fee to use numbers, the carrier would be paying for the right to obtain and distribute the resource, but would not be guaranteed indefinite use of all numbers obtained.

This is not to say, however, that it would be impossible to design an appropriate pricing policy. Rather, the policy must reflect the fact that the resource can migrate from the licensee to another carrier. Moreover, we thought that the great expense incurred in the financing of LNP sought to give the end user a quasi-right to a telephone number. Thus, the selling of numbers could create a second right, by the carrier assigned the number initially, to the same item – the personal telephone number.²⁶ Assuming these questions can be resolved, one potential pricing structure would be an annual license fee based on the quantity of numbers each carrier controls, whether in use, not in use,

respective radio and television stations.

²⁵ While this is not true for all wireline customers, or for wireless customers in the U.S. today, eventually we anticipate that all carriers will implement LNP.

²⁶ As a legal matter, it is not clear what rights the carrier, as assignee, and the end user, not a successor but also an assignee, would have to the same telephone number.

reserved, or otherwise assigned to the carrier. Under this scheme, if a customer is assigned a number by Billy Bob Local Telephone Company, then takes that assigned number to Sierra Sue Telephone Services, only one of those carriers would pay the license fee for access to that number in a given year.²⁷

C. Effect of a Pricing Scheme on Smaller Entrants

The FCC itself notes that implementing a pricing mechanism for numbering resources raises special concerns for new entrants.

Another consideration in determining whether to establish prices for numbers is that the added cost and administrative burden to carriers may inhibit competitive entry if it imposes a disproportionate burden on new entrants. (NPRM, ¶ 230.)

The CPUC does not believe that merely imposing any pricing mechanism would necessarily disadvantage new entrants, even smaller, less well-financed new entrants. The ability of new entrants to compete for numbering resources would depend on how the pricing mechanism is structured, and how much carriers would have to pay for each number or each block of numbers. A smaller competitor may be unable to buy numbers in the same quantity as a larger competitor, but the smaller carrier could well have fewer customers and a commensurate need for fewer numbers initially than a larger, more-established carrier. At the same time, if the price is set too high, the FCC may inadvertently create a barrier to competitive entry. On the other hand, if the price is set too low, then the purpose of charging for access to numbering resources may be defeated.

²⁷ Again, this does raise the question of exactly what rights the carrier's license conveys, since the number can travel from carrier to carrier with the customer.

This again suggests that an annual license fee based on the quantity of numbers would be more appropriate than an initial charge for obtaining numbers.

D. Scope of Administrative Costs

A key component of a pricing mechanism for numbering resources would be the cost of setting up and maintaining the scheme. The CPUC is concerned that if the FCC pursues this option, the costs could easily spin out of control, thus undercutting the purpose and effect of establishing a pricing mechanism because the administrative costs could exceed the benefit gleaned from charging for the use of numbers. The Commission will need to determine with some degree of specificity the scope and reasonableness of the administrative and management costs at the outset. The CPUC is not equipped to offer any estimates, but believes that the administrative costs should include those associated with distributing the numbers, monitoring utilization, collecting the license fees, and enforcing the pricing scheme, i.e., going after carriers who do not pay their fees.²⁸

E. Treatment of the ILECs' Embedded Supply of Numbers

Without question, the ILECs possess a large embedded supply of numbers.²⁹ Many wireless providers also have large supplies of numbers. In the CPUC's view, establishing a competitively-neutral pricing mechanism would require that the ILECs, as

²⁸ Again, since establishing a pricing mechanism for recovery of numbering administration costs would, in turn, create new costs to be recovered, it is not certain that these new costs fall within the of numbering administration costs for which Congress authorized competitively-neutral recovery.

²⁹ The CPUC is aware of the ILECs' claim that their utilization rate is in the 80 to 85 percent range. To date, we have performed no utilization studies to confirm or dispute this claim. The issue here, however, is not whether the numbers in the ILECs' possession are in use or not in use, but rather, that the numbers have been assigned to the ILECs.

well as all carriers currently holding numbers, also pay a license fee for the numbers they already possess at the time the pricing mechanism is put into place.

The significant size of the ILECs' embedded number supply inevitably will raise the question of whether they can recover from their ratepayers any license fees they may have to pay under a future FCC-approved pricing scheme. Some states have adopted a form of price-cap regulation for ILECs, while others have not. In California, the largest four ILECs are subject to price-cap regulation, while the remaining sixteen, all small companies, are still under cost-of-service regulation. The CPUC is not urging the FCC to resolve state costing and pricing issues, but is alerting the FCC to the difficulties which may arise in the cost treatment of license fees for number resources currently controlled by ILECs.

F. A Third Alternative Would Combine Elements of the Market-Based and Administratively Determined Options

The CPUC does not have specific, detailed comments on either the administratively determined or market-based pricing proposals, primarily because California has not addressed a pricing policy for numbering resources. As a consequence, we cannot explicitly endorse either approach.

We do suggest, however, that the Commission also consider a third option which would combine elements of the two proposals. For example, the FCC could establish the base license fee, or price per number or block of numbers. The Commission could then

allow states to apply a market-based component on top of the base fee or price.³⁰ The FCC could create a range for the market-based component and allow state commissions to select the appropriate component within that range. The range would need to be broad enough to reflect the vast differences in costs of doing business in different parts of the country.

This market-based element could be applied in any extremely competitive market, such as in NPAs in the Los Angeles, San Francisco, Chicago, Miami, or New York metropolitan areas. Or, the market-based component could be invoked only when an NPA has gone into jeopardy. In either situation, the state commission would determine whether and when to apply the market-based component, as well as the level of the market-based price element. Similarly, if the state commission determines that little competition exists for numbering resources, for example, in rural or slow-growth regions, only the administrative-cost based license fee would apply.

This approach would allow the FCC to establish a baseline pricing mechanism to recover administrative costs, but would also provide for a pricing mechanism to reflect conditions of supply and demand in specific NPAs.

VI. AREA CODE RELIEF

A. Geographic Splits Versus Overlays

The CPUC generally agrees with the positions set forth in the state outline on splits and overlays. California believes that states are uniquely positioned to evaluate the best

³⁰ Again, this assumes the FCC obtains express authority to establish a market-based pricing scheme.

relief plan on a case-by-case basis, and therefore, the determination of appropriate relief should be left to state commissions. Further, we are strongly persuaded by recent events nationally, in other states, and in California that as regulators, we confront a more fundamental question than whether splits or overlays are superior. The question involves whether states need to implement relief plans at all, or whether we simply need to use the numbering resources already allocated in a more efficient manner. The CPUC believes that the FCC, state commissions, and the industry all need to work together to re-examine the practices fueling the need for relief, and the manner in which relief planning is initiated.

For example, state commissions should not be precluded, as they are currently by the Pennsylvania Order, from making an independent determination that area code relief is or is not needed. If the state commission determines that relief can be forestalled by reclaiming codes, instituting voluntary pooling or applying other conservation measures, the state commission should be authorized to do so. Implementation of relief is costly to the industry and to the public. Already in California, at least four times as many numbers have been allocated as are being used. It would be irresponsible for this agency to continue to approve any and all area code relief plans without determining that relief is truly needed. Yet, pursuant to the Pennsylvania Order, once the industry tells a state commission that relief is necessary, the state commission's role is to approve a relief plan

and set an implementation date, but not to question the industry's claim of needed relief.³¹

The FCC asks whether it should adopt additional rules and guidelines for implementing splits and/or overlays. (NPRM, ¶¶ 248-249.) The CPUC believes no need exists for additional federal regulation of splits or overlays, other than creation of federal guidelines for implementing service- or technology-specific overlays. (See § IV.C of these Comments.) State commissions are singularly situated to determine the best available relief plan among the alternatives presented based on local geography, local needs, the public interest, and carrier capability. State commissions also have knowledge about the success or difficulty of implementing specific area code relief plans and conservation measures.

B. All-Services Overlays

California generally concurs with the state outline that state commissions should decide whether to implement mandatory 10-digit dialing. (See also § III.B of these Comments.) We would add, however, the following observations.

In a 1996 decision, we concluded that 1+10-digit dialing for overlays was necessary to overcome the competitive disadvantages to new carriers. We have not yet

³¹ See the Pennsylvania Order:

In delegating authority to the state commissions to implement new area codes, we intended that state commissions would use that authority to implement relief when jeopardy has been declared. (¶ 32.)

When an area code is in jeopardy, a decision on area code relief [parenthetical omitted] should occur promptly, and through an orderly process. State commissions, by declining to implement area code relief, should not put carriers in the position of having no numbers and therefore being unable to serve customers. (¶ 38.)

formally revisited this conclusion. At the same time, our only experience in California with 1+10-digit dialing, in the 310 NPA in the Los Angeles metropolitan area, resulted in a firestorm of protest, as noted earlier. (See § IV.B of these Comments.) We welcome the FCC's willingness to reconsider the 10-digit dialing requirement, and look forward to seeing the record developed in this rulemaking.

C. Service-Specific or Technology-Specific Overlays

On April 26, 1999, the CPUC filed with the FCC a Petition for Waiver to Implement a Technology-Specific or Service-Specific Area Code. The Common Carrier Bureau has now received three rounds of comments on that petition.³² Here we summarize our position set forth in the Petition, and offer some additional comments.

The CPUC applauds the FCC for its willingness to re-examine its "policies with respect to service-specific and technology-specific overlays, and to consider whether [to] modify or lift the restriction on these area code relief methods". (NPRM, ¶ 257.) The Commission was prompted to reconsider its ban because of the "increased urgency of the numbering crisis", as well as "the broader issues raised in this proceeding". (Id.) The CPUC agrees that the crushing demand for and rapid draining of public numbering resources requires renewed consideration of area codes dedicated to specific technologies or services.

In California, as we have noted in previous pleadings, the public repeatedly and consistently has demanded to know why the CPUC has not established an area code for

³² Comments were due June 14, 1999, replies on June 28, 1999, and a final round, consolidated with all other state petitions

wireless service, or for faxes and modems. We believe that strong public support for and interest in such area codes exists in California. In addition, the FCC several months ago granted a petition by the Cellular Telecommunications Industry Association (CTIA) to defer until 2002 implementation by wireless carriers of LNP. The FCC itself notes that LNP is necessary for carriers to participate in number pooling, and asks whether it should consider creating overlay area codes specifically for carriers that are not LNP-capable. (NPRM, ¶ 260.)

The CPUC's answer to this query is, "yes". The wireless industry argues that wireless carriers use numbers more efficiently than wireline carriers. The CPUC has conducted no utilization studies which would confirm or dispute that claim. Nonetheless, the inability for the next several years of wireless carriers to participate in LNP would allow wireless carriers to continue to draw numbers in blocks of 10,000, while wireline LNP-capable carriers participating in number pooling could draw numbers only in blocks of 1,000. Despite the possibility of this scenario, which plainly would benefit wireless carriers, they continue to insist that a separate area code for wireless services would be discriminatory. As we noted in our June 28th Reply, "[t]he wireless carriers have set themselves apart by their business decision not to implement LNP, yet they insist on being treated the same as all other carriers". (CPUC's Reply, 6/28/99, p. 4.) In the CPUC's view, failing to make a separate accommodation for non-LNP-capable carriers

for waiver or for delegation of additional authority, on July 16, 1999.

would lead to discrimination in favor of the wireless industry and against wireline providers.

In addition, the CPUC finds the wireless industry's claim of discrimination lacking in credibility for another reason. In at least three other nations – Japan, Australia, and England – wireless carrier numbers are assigned to a separate number code which plainly designates to the calling party that the number being called is to a wireless device. So far as the CPUC is aware, the wireless industry is flourishing in those nations. Consequently, in light of public support in California for separate wireless area codes and their successful implementation in other nations, we fail to see how such separate area codes could lead to the demise of the cellular or paging industries in this country. Indeed, while the ban on service- or technology-specific area codes may have been intended to prevent alleged discrimination when the wireless industry was in its more formative stages, the industry is now well-developed and no longer in need of such protection.

Implementation of a technology-specific overlay dedicated to wireless providers would afford a degree of consumer protection in the event that the FCC decides to institute “calling party pays”. (NPRM, ¶ 257.) By placing cellular or PCS numbers in a discrete area code, a caller to a number in that area code would know when dialing that the number being called is to a wireless device, and thus the customer would be on notice that she could be assessed per-minute charges for the call.³³

³³ Certainly, an intercept message is an additional means of informing customers that the call being placed may result in charges to the caller. We are aware that in the Calling Party Pays docket, the FCC is considering a uniform notification standard for CCP calls. (See WT Docket 97-207.)

This scenario, however, would require some public education to inform customers that the discrete area code is dedicated to wireless services, and would work best if all wireless numbers were in one or more discrete area codes. Indeed, we recognize that it is not feasible to overlay a separate NPA over each existing area code, and then dedicate each of those new overlaid NPAs to a particular service or technology. Rather, we believe that the best approach would be to implement an expanded area code dedicated to a particular service or technology over multiple NPAs.³⁴ Again, for this approach to work most effectively, customers of that service or technology would need to move from the existing NPAs covered by the expanded area code into the expanded area code. This would free up the NXX codes assigned to that service in the existing NPAs for reassignment to other carriers.

The CPUC is sensitive, however, to the FCC's reluctance to date to order the reassignment of existing wireless customers to new area codes, thus requiring those customers to change their numbers. Certainly, if a state were to consider implementing this type of expanded NPA, the state commission would need to determine the likely consumer response to a reassignment of numbers to a new area code. Of course, when area codes have split in the past, customers have had to adjust to a number change and they have adapted. It is not immediately apparent to the CPUC why customers of a particular service or technology could not similarly adapt.³⁵ We are mindful that this

³⁴ For example, one NPA dedicated to wireless providers could overlay the existing 818, 626, 323, 213, 310, and 562 area codes.

³⁵ Indeed, in California we have exempted wireless customers from having to change area codes when a split occurs. Those

recommendation goes beyond statements in our June 28th Reply, in which we expressed more deference to the FCC's disapproval of taking back numbers. Since then, as we consider how we might implement a technology- or service-specific overlay, our views have evolved, fueling our more specific comments here.

Finally, the CPUC concurs with the position set forth in the state outline that the FCC should establish general guidelines for service-specific or technology-specific area codes, but delegate to the states the authority to implement such area codes, if the state commission believes doing so would serve the public interest. This delegation of authority would be consistent with the authority to plan and implement area code relief which the FCC already has delegated to the states. In essence, the FCC would simply be expanding that authority to include one more relief option.

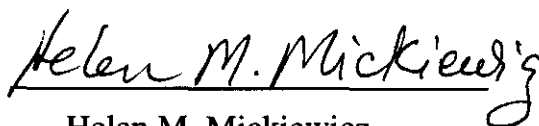
VII. CONCLUSION

The CPUC appreciates the tremendous effort that led to the NPRM, and further acknowledges the FCC's recognition that the numbering problem in this country has reached crisis proportions. We urge the FCC to create a set of national rules which will govern all states and carriers, but also to accord state commissions some measure of additional authority and flexibility to respond to particular conditions in their states.

customers have retained the NPA associated with the tandem, even if the tandem is in the geographic area assigned to the new area code. Thus, in California, wireless customers thus far have been spared the inconvenience NPA changes brought about by splits.

Respectfully submitted,

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